# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 9309 of 2006

**For Approval and Signature:**

**HON'BLE MR.JUSTICE J.M.PANCHAL**

**HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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**VITTHALBHAI SOMABHAI PATEL SINCE DECEASED THROUGH HEIRS & 3 - Petitioner(s)**

**Versus**

**SPECIAL LAND ACQUISITION OFFICER - Respondent(s)**

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**Appearance :**
MR GM AMIN for Petitioner(s) : 1 - 4.
MR SS PATEL, AGP for Respondent(s)

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**CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL**

**and**

**HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

**Date : 10/07/2006**

**ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)**

1. Rule. Mr.Sudhanshu S.Patel, learned Assistant Government Pleader, waives service of Notice on behalf of the respondent. Having regard to the facts of the case, the petition is taken up for final disposal today.

2. By filing the instant petition under Article 226 of the Constitution, the petitioners have prayed to issue appropriate Writ or order directing the District Court, Kheda at Nadiad, to disburse the amount of compensation determined in Land Acquisition Reference Case No.158 of 1987 to the petitioners, which is deposited by the respondent. In the alternative, the petitioners have prayed to direct the District Court, Kheda at Nadiad, to decide

the application submitted by the petitioners for withdrawal of compensation awarded in Land Acquisition Reference Case No.158 of 1987.

3. The father of the petitioners was one of the joint owners of land bearing Survey No.2253/1-2-3 admeasuring 16896 sq.mts. situated in the Sim of village Nadiad, Taluka: Nadiad, District: Kheda. The said land was acquired for the public purpose of S.T.Workshop pursuant to Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (“the Act” for short) which was published in the Official Gazette on July 30, 1981. The Land Acquisition Officer offered compensation to the claimants at the rate of Rs.3/- per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the cases

to the Court for the purpose of determination of just compensation payable to them. Accordingly, References were made to the District Court, Kheda at Nadiad, which were registered as Land Acquisition Reference Cases No.158/1987 to 160/1987. The learned 2nd Joint District Judge, Nadiad, by judgment and award dated November 21, 1990, awarded additional compensation to the claimants as per Column No.11 of the Schedule attached to his award. According to the petitioners, the total amount of compensation deposited by the respondent was Rs.6,38,218=17 ps. What is claimed by the petitioners is that the land which was acquired was a joint family property in which, the father of the petitioners had 1/3rd share and therefore, the petitioners were entitled to get Rs.2,12,739/-. According to the petitioners, other two joint holders of the land had withdrawn their share of compensation and therefore, the petitioners' father made an application on September 14, 2000, to permit

him to withdraw his share of compensation. What is contended by the petitioners is that the grand-father of the petitioners had executed a Will dated March 2, 1974, bequeathing his properties to their father and therefore, the petitioners had applied for Probate which was granted by an order dated January 18, 1992. It is mentioned by the petitioners that though the father of the petitioners had made application, the amount due was not disbursed to him and that their father expired on May 6, 2005. The grievance made by the petitioners is that the application submitted by their father has not been decided by the Court concerned nor the amount payable to the petitioners is disbursed. Under the circumstances, the petitioners have filed the instant petition and claimed reliefs to which reference is made earlier.

4. This petition was placed for admission hearing before the Court on May 1, 2006, and

after the hearing the learned advocate for the petitioners, Notice was issued making it returnable on June 21, 2006. Though the respondent is duly served, no affidavit-in-reply on his behalf has been filed controverting the averments made in the petition.

5. This Court has heard Mr.G.M.Amin, learned advocate for the petitioners as well as Mr.Sudhanshu S.Patel, learned AGP, for the respondent, and has considered the documents forming part of the petition.

6. From the record of the case, it is evident that compensation payable to the petitioners was enhanced by the learned 2nd Joint District Judge, Nadiad, vide judgment and award dated November 21, 1990, rendered in Land Acquisition Reference Cases No.158/1987 to 160/1987. The fact that deceased Vitthalbhai Somabhai Patel had filed application for permitting him to withdraw the amount of

compensation payable to him at Ex.1 on September 14, 2000, is also not in dispute. This fact is quite evident from Annexure-B produced on the record of the petition. This application dated September 14, 2000 was not decided and therefore, his son filed another application in February 2005 to permit his father to withdraw the amount. As observed earlier, the father of the petitioners, i.e. Vitthalbhai Somabhai Patel expired on May 6, 2005, and therefore, the petitioners filed application in the month of December 2005, requesting the Court to permit them to withdraw the amount of compensation already deposited by the respondent. This is quite evident from Annexure-C, which is produced by the petitioners. The record further shows that the petitioners submitted another application on July 7, 2005, requesting the Court to bring them on record of the case as heirs and legal representatives of deceased Vitthalbhai Somabhai. The application submitted by the petitioners on July 7, 2005,

is produced on the record of the petition at Annexure-D.

7. The record shows that the applications submitted by the petitioners have remained undecided and no orders have been passed by the competent Court. According to the petitioners, the applications submitted by the petitioners are not decided because there was a vacancy of clerk which was not filled up for a long period and also because the designations of the learned Extra Assistant Judge, learned Joint District Judge, etc. have been changed. Under the circumstances, this Court is of the opinion that a good case is made out by the petitioners for directing the learned 2nd Joint District Judge, Nadiad, to decide the applications submitted by the petitioners. The prayer made by the petitioners in paragraph-20(b) of the petition cannot be granted at this stage in view of the fact that the applications submitted by the petitioners are not decided.

Therefore, said prayer is hereby refused.

8. For the foregoing reasons, the petition partly succeeds. The learned 2nd Joint District Judge, Nadiad, is hereby directed to decide the applications submitted by the petitioners as early as possible and without any avoidable delay. Rule is made absolute accordingly. There shall be no orders as to cost.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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